

BRB No. 06-0854 BLA

LARRY R. CENTERS)
)
 Claimant-Respondent)
)
 v.)
)
 BR & D ENTERPRISES, INCORPORATED) DATE ISSUED: 07/30/2007
)
 and)
)
 KENTUCKY EMPLOYERS MUTUAL)
 INSURANCE)
)
 Employer/Carrier-Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer/carrier.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2005-BLA-5592) of Administrative Law Judge Adele Higgins Odegard on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Based on claimant's filing date of January 7,

2004, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and credited claimant with 21.3 years of coal mine employment. The administrative law judge found the medical opinion evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.202(a)(4), 718.203(b). In addition, she found the evidence sufficient to establish a totally disabling respiratory impairment due to pneumoconiosis. 20 C.F.R. §718.204(b)(2), (c). Accordingly, the administrative law judge awarded benefits, commencing as of January 2004.

On appeal, employer contends that the administrative law judge erred in the weight she accorded the conflicting medical opinions as to whether claimant suffers from pneumoconiosis. In addition, employer generally contends that the administrative law judge erred in finding the evidence sufficient to establish that the miner's total respiratory disability was due to pneumoconiosis. In response, claimant urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not respond in this appeal.¹

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling.² See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Peabody Coal Co.*

¹ The parties do not challenge the administrative law judge's finding of 21.3 years of coal mine employment or her determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1)-(3). The parties also do not challenge the administrative law judge's finding at 20 C.F.R. §718.203(b), based on at least ten years of coal mine employment, that claimant's pneumoconiosis arose out of coal mine employment, or her determination that claimant established a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). These findings are therefore affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

² As claimant's last coal mine employment occurred in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. Director's Exhibits 3, 5; see *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

v. Hill, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the evidence of record, and the briefs filed in this appeal, we affirm the administrative law judge's award of benefits as supported by substantial evidence.

Pursuant to Section 718.202(a)(4), the administrative law judge set forth the relevant medical opinion evidence and found that claimant established the existence of pneumoconiosis, based on her determination that Dr. Baker's opinion, that claimant suffers from pneumoconiosis, was the most persuasive opinion of record. Decision and Order at 16. In finding that Dr. Baker's opinion outweighed the contrary medical evidence, the administrative law judge considered the opinions of Drs. Baker and Mettu, that claimant suffers from pneumoconiosis, and the contrary opinions of Drs. Dahhan, Broudy and Fino, that claimant does not suffer from pneumoconiosis. Decision and Order at 14-16.

Employer contends that the administrative law judge erred in finding the opinion of Dr. Baker, that claimant suffers from pneumoconiosis, to be well-reasoned, arguing that Dr. Baker's opinion is not supported by its documentation. Employer's Brief at 5-6. In addition, employer generally contends that the administrative law judge erred in finding the opinion of Dr. Dahhan to be equivocal, arguing that Dr. Dahhan provided a definitive opinion that claimant does not suffer from pneumoconiosis. Employer's Brief at 5. These contentions are not meritorious. The administrative law judge reasonably found that the opinion of Dr. Baker was well-reasoned as the conclusions contained therein are supported by objective evidence as well as the medical treatment notes provided by Dr. Baker. Decision and Order at 5-6, 15-16; Director's Exhibit 25; Claimant's Exhibits 4-5; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Moreover, in considering Dr. Baker's opinion, the administrative law judge noted that Dr. Baker considered both claimant's smoking history of at least 22 years, which Dr. Baker described as a heavy smoking history, and claimant's coal mine employment history of 20 years, and determined that claimant's obstructive pulmonary impairment was the result of both claimant's heavy smoking history and his coal mine employment. Decision and Order at 5, 15. Because the administrative law judge considered both Dr. Baker's report and deposition testimony, as well as the documentation and histories on which his opinion was based, we affirm the administrative law judge's finding that this opinion was sufficient to establish the existence of pneumoconiosis. See *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000).

Moreover, we reject employer's contention that the administrative law judge erred

in rejecting Dr. Dahhan's opinion because he found it to be equivocal, as employer misstates the administrative law judge's finding. Contrary to employer's contention, the administrative law judge specifically found that Dr. Dahhan provide a reasoned opinion that claimant did not have clinical pneumoconiosis since he explained how the objective evidence supported his opinion on that issue. However, on the issue of legal pneumoconiosis, the administrative law judge properly found that that Dr. Dahhan "did not discuss the basis for his conclusion that the objective medical evidence pointed solely to cigarette smoking as the cause of [c]laimant's pulmonary impairment." Decision and Order at 15. Consequently, as the administrative law judge found that Dr. Dahhan failed to fully explain the basis for his conclusion that claimant's respiratory condition was due solely to claimant's smoking history, we affirm the administrative law judge's determination to assign his opinion less weight. See *Cornett*, 227 F.3d 569, 22 BLR 2-107; *Clark*, 12 BLR 1-149; see also *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 23 BLR 2- 261 (6th Cir. 2005).

Because employer does not challenge the weight the administrative law judge accorded the remaining medical opinions of Drs. Mettu, Broudy and Fino, the administrative law judge's findings with respect to these physicians are affirmed.³ Decision and Order at 15-16; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); see *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Consequently, we affirm the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *Cornett*, 227 F.3d 569, 22 BLR 2-107.

With regard to the administrative law judge's finding at Section 718.204(c), that the medical evidence is sufficient to support a determination that claimant's pneumoconiosis is a substantially contributing cause of the miner's total disability, employer contends that the administrative law judge erred in failing to adequately explain her rationale. Employer's Brief at 6. Employer generally contends that the administrative law judge's finding that the existence of legal pneumoconiosis had been established, predetermined her conclusion that disability causation was established, and that she merely "seems to pay lip service" to the appropriate standard. *Id.* This contention lacks merit.

³ The administrative law judge determined that Dr. Broudy's opinion that claimant did not have either clinical or legal pneumoconiosis was not well-reasoned. Decision and Order at 14-15. He found that Dr. Mettu's diagnosis that claimant suffered from legal pneumoconiosis was conclusory. Decision and Order at 15. He also found that Dr. Fino's opinion did not directly contradict Dr. Baker's conclusion that claimant has coal worker's pneumoconiosis because Dr. Fino did not specifically rule out coal dust inhalation as a cause of claimant's emphysema. Decision and Order at 16.

Contrary to employer's contention, the administrative law judge determined that claimant must establish that pneumoconiosis is a contributing cause of some discernable consequence to his respiratory impairment. *See Cornett*, 227 F.3d 569, 22 BLR 2-107; *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997). Moreover, employer does not raise any specific allegation of error with respect to the administrative law judge's finding at Section 718.204(c), other than the general contention that the administrative law judge failed to explain her findings. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). However, the administrative law judge provided her rationale for according greater weight to Dr. Baker's opinion than to the contrary medical opinions of record. The administrative law judge specifically stated that Dr. Baker's opinion that claimant's total disability is due to both his cigarette smoking and coal dust exposure, is well-reasoned and better explained than the contrary opinions, which she found failed to provide an adequate explanation for their conclusions. Decision and Order at 21-22. Since claimant need not establish that pneumoconiosis is the sole cause of his total disability, we hold that the administrative law judge reasonably determined that Dr. Baker's opinion is sufficient to establish disability causation. *See Cornett*, 227 F.3d 569, 22 BLR 2-107; *Smith*, 127 F.3d 504, 21 BLR 2-180.

In sum, the administrative law judge explained the relative weight she assigned to the relevant evidence and provided valid reasons for her weighing of the conflicting medical opinion evidence. Decision and Order at 21-22. Because the Board is not empowered to reweigh the evidence, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), we reject employer's contention that the administrative law judge erred in finding disability causation established, and affirm the administrative law judge's finding pursuant to Section 718.204(c). *See Cornett*, 227 F.3d 569, 22 BLR 2-107; *Smith*, 127 F.3d 504, 21 BLR 2-180.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge